(1)

Supreme Court, U.S.
FILED

9 7 1 8 9 8 MAY 26 1998

No.

OFFICE OF THE CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

DAVID L. WILLIAMS,

Petitioner,

v.

COMMONWEALTH OF PENNSYLVANIA,

Respondent.

On Petition for Writ of Certiorari to the Supreme Court of the Commonwealth of Pennsylvania

PETITION FOR WRIT OF CERTIORARI

JOHN G. BERGDOLL
Counsel of Record
LAW OFFICES OF JOHN G. BERGDOLL
300 West Market Street
York, Pennsylvania 17401
(717) 845-5131
Attorney for Petitioner

42 pp

QUESTION PRESENTED FOR REVIEW

1. Whether Petitioner's Constitutional rights of Double Jeopardy and Due Process under the Fifth and Fourteenth Amendments to the United States Constitution were violated due to the unconstitutional dual prosecution and penalty in this case.

LIST OF PARTIES TO THE PROCEEDINGS IN THE COURT BELOW

The caption of the case in this Court contains the names of all parties to the proceedings in the appellate courts of the Commonwealth of Pennsylvania.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
PARTIES TO THE PROCEEDING	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	v
OPINIONS BELOW	1
STATEMENT OF JURISDICTION	1
CONSTITUTIONAL PROVISIONS INVOLVED	1
STATUTE INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	7
THIS COURT SHOULD GRANT THE PETITION FOR WRIT OF CERTIORARI TO DETERMINE WHETHER PETITIONER'S CONSTITUTIONAL RIGHTS OF DOUBLE JEOPARDY AND DUE PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION WERE VIOLATED DUE TO THE UNCONSTITUTIONAL DUAL PROSECUTION AND PENALTY IN THIS CASE	7
CONCLUSION	15

APPENDIX

	Page
A--Order of the Supreme Court of the Commonwealth of Pennsylvania dated February 23, 1998 and filed February 24, 1998	A-1
B--Memorandum Opinion and Order of the Superior Court of the Commonwealth of Pennsylvania dated August 28, 1997 affirming the trial Court's decision	B-1
C--Memorandum in Support of Order Pursuant to Pa.R.A.P. 1925(a) as filed by The Honorable Joseph E. Erb, Senior Judge, dated September 25, 1996	C-1
D--Judgment of Sentence and Order Issued by The Honorable Joseph E. Erb, Senior Judge, Dated April 29, 1996	D-1
E--Opinion and Order issued by the Honorable Joseph E. Erb, Senior Judge, York County Court of Common Pleas, dated February 5, 1996 affirming the Summary Conviction Appeal and Refusing and Denying the Points of Error	E-1
F--75 Pa.C.S.A. 1543	F-1
G--License Suspension Letter from Pennsylvania Department of Transportation dated February 24, 1995	G-1

TABLE OF AUTHORITIES

Cases cited:	Page
Commonwealth v. Wingait Farms, 547 Pa. 332, 690 A.2d 222 (1997), cert. den., __ U.S. __, 118 S.Ct. 98, 139 L.Ed.2d 53 (1997)	14
Austin v. United States, 509 U.S. 602, 113 S.Ct. 2801, 125 L.Ed.2d 488 (1993)	13
Bell v. Burson, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90 (1971)	12
Benton v. Maryland, 395 U.S. 784, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969)	9
Breed v. Jones, 421 U.S. 519, 95 S.Ct. 1779, 44 L.Ed.2d 346 (1975)	10
Department of Revenue of Montana v. Kurth Ranch, 511 U.S. 767, 114 S.Ct. 1937, 128 L.Ed.2d 767 (1994)	12, 13, 14
Helvering v. Mitchell, 303 U.S. 391, 58 S.Ct. 630, 82 L.Ed. 917 (1938)	10
Hudson v. United States, __ U.S. __, 118 S.Ct 488, 139 L.Ed.2d 450 (1997)	9-12
Kennedy v. Mendoza-Martinez, 372 U.S. 144, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963)	11
Missouri v. Hunter, 459 U.S. 359, 103 S.Ct. 673, 74 L.Ed.2d 535 (1983)	10
Moore v. Illinois, 55 U.S. 13, 14 HOW 13, 14 L.Ed. 306 (1852)	10
United States v. Halper, 490 U.S. 435, 109 S.Ct. 1892, 104 L.Ed.2d 487 (1989)	10, 12, 14

Page

United States ex rel. Marcus v. Hess, 317 U.S. 537, 63 S.Ct. 379, 87 L.Ed. 443 (1943) 10

United States v. Ursery, 518 U.S. 267, 116 S.Ct. 2135, 135 L.Ed.2d 549 (1996) 14

United States v. Ward, 448 U.S. 242, 100 S.Ct. 2636, 65 L.Ed.2d 742 (1980) 11

Constitutional Provisions Cited:

U.S. Const. Amend. V 1

U.S. Const. Amend. XIV 2

Statutes Cited:

28 U.S.C. 1257 1

75 Pa.C.S.A. 1542 14

75 Pa.C.S.A. 1543 7

Miscellaneous:

1996 Pennsylvania Crash Facts and Statistics, Pennsylvania Department of Transportation, Bureau of Highway Safety and Traffic Engineering 13

The Petitioner, David L. Williams, respectfully prays that a Writ of Certiorari issue to review the denial by the Pennsylvania Supreme Court of Petitioner's Petition for Allowance of Appeal therein as filed on February 24, 1998.

OPINIONS BELOW

On February 24, 1998, the Supreme Court of Pennsylvania denied without opinion, Petitioner's Petition for Allowance of Appeal. The Supreme Court Order (A-1) is cited at ___ Pa. ____, 706 A.2d 1213 (1998). Said Petition was filed based on the unpublished memorandum decision by the Pennsylvania Superior Court (B-1) on August 28, 1997 as cited at ___ Pa. Super. ____, 704 A.2d 696 (1997) which affirmed the Judgment of Sentence and Order issued by the trial court on April 29, 1996 (C-1).

STATEMENT OF JURISDICTION

On February 24, 1998, the Supreme Court of Pennsylvania entered its Order for which Petitioner seeks the Writ of Certiorari.

This Court has jurisdiction to review this case under 28 U.S.C. 1257.

CONSTITUTIONAL PROVISIONS INVOLVED

Fifth Amendment to the United States Constitution:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in the time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Fourteenth Amendment to the United States Constitution, Section 1:

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATUTE INVOLVED

75 Pa.C.S.A. 1543 (F-1)

STATEMENT OF THE CASE

David L. Williams, Petitioner herein, was stopped by Patrolman Timothy Harvey of the Springettsbury Township Police Department (York County, Pennsylvania) on November 20, 1994. Patrolman Harvey followed Mr. Williams who was driving on Route 30 for approximately one-half mile before activating his lights whereupon the Petitioner immediately and properly pulled over his vehicle.

No citations were issued at the scene and Mr. Williams was released.

Mr. Williams was charged with a violation of driving under suspension under Section 1543(b) (F-1) of the Pennsylvania Motor Vehicle Code by citation filed with the office of District Justice Roy L. Lam in Springettsbury Township on December 9, 1994.

The summary trial was held on January 25, 1995 before District Justice Roy Lam, a lay justice sitting in a court not of record, at which time the Petitioner was found guilty.

Notwithstanding that the Petitioner had a right to appeal the decision to the Court of Common Pleas of York County, Pennsylvania and in fact timely and properly filed a summary conviction appeal on February 24, 1995 for a De Novo Hearing, District Justice Lam immediately notified the Pennsylvania Department of Transportation of his finding of guilt.

In response to the certification by the District Justice of the ruling as to guilt, the Commonwealth of Pennsylvania Department of Transportation, by notice dated February 24, 1995, notified the Petitioner that the Department was taking action against him to suspend his driver's license for one year on the basis of the same acts and the "conviction" by the District Justice of him for Driving Under Suspension (G-1).

The Pennsylvania Department of Transportation took action to suspend and in fact the Petitioner's Pennsylvania

driving privileges were suspended on March 23, 1995 for one year.

The separate action by the Department of Transportation proceeded without reference to the fact that the Petitioner had in fact appealed the decision of the District Justice to the Court of Common Pleas of York County, which appeal was an Appeal De Novo to the Trial Court of Record in this case.

The Petitioner, partially for financial reasons, attempted pro se to respond to the Notice of action of Suspension from the Pennsylvania Department of Transportation dated February 24, 1995 (G-1) by forwarding a copy of the appeal papers in this summary criminal case to the Pennsylvania Department of Transportation indicating to them that the Appeal De Novo had been filed and that no Trial of Record had been held.

The Department in fact continued to prosecute the suspension and Mr. Williams' license was suspended in accordance with the Notice of Action of Suspension for the acts giving rise to this case of Driving Under Suspension on March 23, 1995 in that the Petitioner sent to the Department of Transportation the wrong appeal papers, i.e. the Summary Appeal papers and not those papers necessary to effect an "appeal" in the suspension action by the Pennsylvania Department of Transportation.

The Petitioner at the time of the De Novo trial of this criminal case, on May 31, 1995, in fact was well into serving his one-year license suspension penalty for the charge filed in this case by Officer Harvey and yet had not been convicted of the crime that was to bring about the suspension penalty.

In the Summary Conviction Appeal in the Common Pleas Court of York County, Pennsylvania, Petitioner's Motions were filed on May 15, 1995. Said Motions as presented included reference to constitutional violations of double jeopardy and due process protections as provided in the United States Constitution.

A hearing on said motions and a De Novo Summary Trial were held before the Honorable Joseph E. Erb (York County, Pennsylvania Court of Common Pleas) on May 31, 1995. The record of said hearing included a reference to the constitutional violation of double jeopardy and resulting due process violations.

The Officer testified at the May 31, 1995 combined Pre-trial Hearing and Trial of this case that he had pulled Mr. Williams' vehicle over after he had followed him from approximately North Hills Road in Springettsbury Township, York County, Pennsylvania for one-half mile to North Sherman Street. The Officer testified as follows:

> I observed that it was traveling approximately 30 to 35 miles an hour, and also that the right wheels of the vehicle were juggling off the roadway onto the berm, basically straddling the white line by about one to two feet....

The Petitioner was cooperative with the Police Officer and at the Officer's request performed field sobriety tests which the Officer determined that he passed. As was observed in the factual Hearing of this case the Petitioner is blind in one eye.

At the time the Officer approached Mr. Williams' vehicle after having pulled him over, the Officer asked Mr. Williams for his driver's license and registration and at that time was told by Mr. Williams that he did not have a license.

Petitioner's Memorandum was filed in the trial court on June 23, 1995 and included references to the double jeopardy and due process violations of the United States Constitution. The Commonwealth responded with their brief on July 24, 1995.

An Opinion and Order was issued by The Honorable Joseph E. Erb of the York County, Pennsylvania Court of Common Pleas, the Court of record, on February 5, 1996 (E-1) denying and refusing Petitioner's Motions and finding the Petitioner guilty.

Sentencing was scheduled for March 25, 1996 and continued to April 29, 1996 at which time Petitioner was sentenced in this case to penalties including a $1,000.00 fine and ninety days incarceration (D-1).

Before the time of sentencing, the Petitioner had fully served the one-year suspension penalty in the action by the Pennsylvania Department of Transportation.

Notice of Appeal to the Superior Court of Pennsylvania was timely filed on May 24, 1996.

On May 29, 1996, The Honorable Joseph E. Erb filed a Direction to Defendant to File a Statement of Matters Complained of under Pennsylvania Rule of Appellate Procedure 1925(b) and said response was filed by the Petitioner on June 11, 1996, which again included assertions as to violations of due process and double jeopardy as contained in the Federal and State constitutions.

As required, the Criminal Docketing Statement was filed with the Superior Court of Pennsylvania on July 2, 1996 which listed the issues for appeal and said issues contained reference to the double jeopardy and due process violations under the Federal and State Constitutions.

A Brief and accompanying Reproduced Record were filed in support of the appeal on November 3, 1996 in the Pennsylvania Superior Court. Said Brief also raised the due process and double jeopardy violations of the Federal Constitution.

On September 25, 1996, The Honorable Joseph E. Erb filed a Memorandum in Support of Order Pursuant to Pa.R.App.P. 1925(a) (C-1).

Following briefing and oral argument, the Superior Court of Pennsylvania affirmed the Lower Court's Opinion on August 28, 1997 (B-1) wherein the Court addressed the double jeopardy issue.

On September 26, 1997, Petitioner filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania which also referenced the aforesaid violations of the Constitutions of the United States and of the Commonwealth of Pennsylvania.

Said Petition was denied by the Supreme Court, without opinion, on February 24, 1998 (A-1).

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD GRANT THE PETITION FOR WRIT OF CERTIORARI TO DETERMINE WHETHER PETITIONER'S CONSTITUTIONAL RIGHTS OF DOUBLE JEOPARDY AND DUE PROCESS UNDER THE FIFTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION WERE VIOLATED DUE TO THE UNCONSTITUTIONAL DUAL PROSECUTION AND PENALTY IN THIS CASE.

Petitioner's rights of Due Process and Double Jeopardy under the Constitution of the United States were violated in that the Petitioner was tried, convicted and sanctioned twice for the same criminal offense.

Section 1543 of the Pennsylvania Motor Vehicle Code (F-1) is repugnant to the United States Constitution in that this dual statute is unconstitutional in creating a duality of procedure lacking due process, resulting in dual penalties for the same acts and thus violating the Fifth Amendment as to Double Jeopardy and the Fourteenth Amendment as to deprivation of life, liberty and the pursuit of happiness without due process of law. The statute reads as follows:

> 75 Pa.C.S.A. § 1543 TITLE, REGISTRATION, LICENSING
>
> § 1543. Driving while operating privilege is suspended or revoked

(a) Offense defined.- Except as provided in subsection (b), any person who drives a motor vehicle on any highway or traffic way of this Commonwealth after the commencement of a suspension, revocation or cancellation of the operating privilege and before the operating privilege has been restored is guilty of a summary offense and shall, upon conviction, be sentenced to pay a fine of $200.

(b) Certain offenses.-

(1) Any person who drives a motor vehicle on any highway or trafficway of this Commonwealth at a time when their operating privilege is suspended or revoked as a condition of acceptance of Accelerated Rehabilitative Disposition for a violation of section 3731 (relating to driving under influence of alcohol or controlled substance) or because of a violation of section 1547(b)(1) (relating to suspension for refusal) or 3731 shall, upon conviction, be guilty of a summary offense and shall be sentenced to pay a fine of $1,000 and to undergo imprisonment for a period of not less than 90 days.

(2) This subsection shall apply to any person against whom one of these suspensions has been imposed whether the person is currently serving this suspension or whether the effective date of suspension has been deferred under any of the provisions of section 1544 (relating to additional period of revocation or suspension). This provision shall also apply until the person has had the operating privilege restored. This subsection shall also apply to any revocation imposed pursuant to section 1542 (relating to revocation of habitual offender's license) if any of the enumerated offenses was for a violation of section 3731.

(c) Suspension or revocation of operating privilege. - Upon receiving a certified record of the conviction of any person under this section,

> the department shall suspend or revoke that person's operating privilege as follows:
>
> (1) If the department's records show that the person was under suspension, recall or cancellation on the date of violation, and had not been restored, the department shall suspend the person's operating privilege for an additional one-year period.
>
> (2) If the department's records show that the person was under revocation on the date of violation, and had not been restored, the department shall revoke the person's operating privilege for an additional two-year period.
>
> **(d) Citation of appropriate subsection.** -Prior to filing a citation for a violation of this section with the issuing authority named in the citation, the police officer shall verify the basis for the suspension with the department. Upon receiving the verification, the officer shall cite the appropriate subsection of this section on the citation.
>
> 1976, June 17, P.L. 162, No. 81, § 1, imd. effective. Amended 1982, Dec.15, P.L. 1268, No. 289, § 4, effective in 30 days; 1986, Dec. 11, P.L. 1530, No. 166, § 4, effective in 60 days; 1987, Nov.23, P.L. 399, No. 82, § 3, effective in 60 days; 1994, Dec.12, P.L. 1048, No. 143, § 2, effective in nine months.

This Court held in Benton v. Maryland, 395 U.S. 784, 89 S.Ct. 2056, 23 L.Ed.2d 707 (1969) that the "double jeopardy prohibition of the Fifth Amendment represents a fundamental ideal in our constitutional heritage, and that it should apply to the States through the Fourteenth Amendment".

Chief Justice Rehnquist stated for the Court in Hudson v. United States, ___ U.S. ___, 118 S.Ct. 488, 139 L.Ed.2d 450 (1997) that:

> The Double Jeopardy Clause provides that no "person [shall] be subject for the same offence to

> be twice put in jeopardy of life or limb." We have long recognized that the Double Jeopardy Clause does not prohibit the imposition of any additional sanction that could, "'in common parlance,'" be described as punishment. United States ex rel. Marcus v. Hess, 317 U.S. 537, 549, 87 L.Ed. 443, 63 S.Ct. 379 (1943) (quoting Moore v. Illinois, 55 U.S. 13, 14 HOW 13, 19, 14 L.Ed. 306 (1852)). The Clause protects only against the imposition of multiple criminal punishments for the same offense, Helvering v. Mitchell, 303 U.S. 391, 399, 82 L.Ed. 917, 58 S.Ct. 630 (1938); see also Hess, 317 U.S. at 548-549 ("Only" "criminal punishment" "subjects the defendant to 'jeopardy' within the constitutional meaning"); Breed v. Jones, 421 U.S. 519, 528, 44 L.Ed.2d 346, 95 S. Ct. 1779 (1975) ("In the constitutional sense, jeopardy describes the risk that is traditionally associated with a criminal prosecution"), and then only when such occurs in successive proceedings, see Missouri v. Hunter, 459 U.S. 359, 366, 74 L.Ed.2d 535, 103 S.Ct. 673 (1983).

Certainly, Section 1543 of the Pennsylvania Motor Vehicle Code and the dual procedure and punishment set forth therein for the same acts, which is most often successive procedure and punishment, are criminal in nature under the criteria set forth in Hudson, cited supra, (disavowing in part the analysis in U.S. v. Halper, 490 U.S. 435, 109 S.Ct. 1892, 104 L.Ed.2d 487 (1989) which analysis it is submitted would also bring the conclusion that Section 1543 is an unconstitutionally dual criminal procedure and penalty).

The statute with its dual procedure and punishment is on its face criminal in nature and it is clear that the Pennsylvania Legislature intended it as such. Both procedures, that by the District Attorney in prosecuting this case under 1543(b) of the statute, and the Pennsylvania Department of Transportation in prosecuting under 1543(c) do so based on a "conviction". The language used by the Pennsylvania Legislature

is criminal in nature and intent. The conviction is that of a summary criminal offense as defined in Section 1543(a) and 1543(b). The penalty of suspension under 1543(c)(2) is increased if the defendant was under revocation at the time of the "violation", a type of penalty enhancement and recidivism deterrence.

The Legislature has clearly labeled and intended the statute criminal and not civil. See United States v. Ward, 448 U.S. 242, 248-249, 100 S.Ct. 2636, 65 L.Ed.2d 742 (1980).

Since the Pennsylvania Legislature has not "indicated an intention to establish a civil penalty", it is submitted there should be no need to apply the second stage of the Hudson and Ward analysis, that is, to by the "clearest proof" override legislative intent and transform...a civil remedy into a criminal penalty". Ward, cited supra, at p. 249 and see Hudson, cited supra.

Moreover, even if the second stage of the Hudson and Ward analysis would be applied that is:

> (1) "whether the sanction involves an affirmative disability or restraint"; (2) "whether it has historically been regarded as a punishment"; (3) "whether it comes into play only on a finding of scienter"; (4) "whether its operation will promote the traditional aims of punishment -- retribution and deterrence"; (5) "whether the behavior to which it applies is already a crime"; (6) "whether an alternative purpose to which it may rationally be connected is assignable for it"; and (7) "whether it appears excessive in relation to the alternative purpose assigned."
> Hudson, cited supra, and Kennedy v. Mendoza-Martinez, 372 U.S. 144, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963).

this dual criminal statute considered in relation to the statute on its face involves (1) a clear disability and restraint in both the incarceration of 1543(b) and the suspension penalty of 1543(c); (2) has historically been considered punishment at least to the

extent of a requirement as to due process - see Bell v. Burson, 402 U.S. 535, 91 S.Ct. 1586, 29 L.Ed.2d 90 (1971); (3) in 1543 there is scienter involved that is knowledge and criminal intent to drive while under suspension; (4) certainly there is deterrence and retribution in loss of license to Mr. Williams who is partially disabled and lives alone and who is cut off from society for all intent and purposes by the loss of the ability to drive because no other means of transportation is available to him; (5) the behavior penalized is clearly made a crime in 1543 itself; (6) the only alternative purpose to which it might connect, that is, taking those off the highway who drive while suspended, is hardly a factor where the person has merely driven while under suspension and not committed some heinous crime making her or him a danger to society. The Petitioner, Mr. Williams, in the case before the Court was not charged with any unsafe driving and was not even involved in any accident or near an accident; and (7) certainly, in light of the foregoing, dual punishment for driving under suspension is not only excessive but unnecessary and of no benefit to any alternative purpose of public safety the Legislature might have considered if in fact it did.

The criteria in the Hudson case are clearly met showing the dual procedure and penalties of 1543 to be both criminal in nature and thereby clearly implicating double jeopardy and due process provisions of the United States Constitution. Department of Revenue of Montana v. Kurth Ranch, 511 U.S. 767, 114 S.Ct. 1937, 128 L.Ed.2d 767 (1994).

The dual procedure in this case has overwhelmed Mr. Williams, as it has many others in the Commonwealth of Pennsylvania, with the necessity to defend two separate prosecutions with different procedures in different hearings and with different prosecutors all for the same single act of driving while under suspension.

This is in violation of due process and protections as to double jeopardy as provided in the Constitution of the United States. See Department of Revenue of Montana v. Kurth Ranch, cited supra; see also United States v. Halper, 490 U.S. 435, 109 S.Ct. 1892, 104 S.Ct. 487 (1989), disavowed in part by Hudson v. United States, ___ U.S. ___, 118 S.Ct. 488, 139 L.Ed.2d 450

(1997) and Austin v. United States, 509 U.S. 602, 113 S.Ct. 2801, 125 L.Ed.2d 488 (1993).

Clearly under the criteria set in Hudson, Kurth Ranch and Halper, cited supra, jeopardy has attached and further prosecution and penalty in this case would amount to excessive and dual process and punishments for the same offense.

The action of the Department of Transportation in this case was a separate action, brought for the purpose of exacting a punishment and sanction. The procedure and punishment by the Department's action is clearly set forth in its notice of action to suspend (G-1).

In most geographical areas of the United States, including most areas of York County, Pennsylvania where this offense occurred, the sole means of transportation is by automobile. To the great number of persons in these places, the inability to drive creates the inability to work, the inability to obtain the necessities of life such as food and medical assistance and the inability to exercise the constitutional rights of a citizen to participate in government and to vote and, of course, social isolation especially for those persons who live alone. Very clearly, there is a deprivation of life, liberty and property.

On the other hand by comparison, incarceration takes away few of these basic needs and rights and is for many persons much less punitive and much less restrictive of liberty. A person who is incarcerated is housed, fed, and cared for and he for the most part maintains the ability to exercise his rights as a citizen, can obtain all his necessities, and often can work in work release at his place of employment.

As to whether there is any remedial benefit to the Commonwealth of Pennsylvania in a suspension imposed for driving under suspension there is certainly room for great doubt, as has been recognized in somewhat recent legislation in Pennsylvania restoring the licenses of thousands of persons who were too harshly penalized for driving under suspension (Section 4 of Act 1994, December 12, P.L. 1048, No. 143, 75 Pa.C.S.A.

1542 as amended).

It was by the enactment of this statute that the Commonwealth of Pennsylvania admitted and determined that the Commonwealth was not served, yet made whole, by these suspensions but in fact damaged by them.

Statistical data after the enactment and release of these suspended drivers to drive again in fact showed a decrease in accident fatalities per vehicle miles traveled. 1996 Pennsylvania Crash Facts and Statistics, Pennsylvania Department of Transportation, Bureau of Highway Safety and Traffic Engineering, Page 11.

A license suspension proceeding is a very personal proceeding involving a very personal punishment as personal and as severe as incarceration and is not an in rem proceeding as analyzed in United States v. Ursery, 518 U.S. 267, 116 S.Ct. 2135, 135 L.Ed.2d 549 (1996) and Commonwealth v. Wingait Farms, 547 Pa. 332, 690 A.2d 222 (1997), cert. denied, ___ U.S. __, 118 S.Ct. 98, 139 L.Ed.2d 53 (1997).

The criteria set forth in Kurth Ranch, cited supra, are certainly met by such a suspension. Herein the suspension in a separate proceeding is conditioned on a crime, imposed after arrest and the only person subject to suspension is the person charged with the offense. See this Court's interpretation in Ursery, cited supra, of Kurth Ranch, cited supra, including also an analysis of Halper, cited supra, with dissent by Justice Stevens.

In that the Petitioner has already had his license suspended for one year by the process initiated by the District Justice and concluded with actual suspension of the Petitioner's license by the Pennsylvania Department of Transportation, the case at bar should be dismissed on double jeopardy and/or due process grounds, the Petitioner discharged, and the dual procedure used to prosecute the Petitioner condemned.

CONCLUSION

For these reasons, a Writ of Certiorari should be issued to the Supreme Court of the Commonwealth of Pennsylvania to review the question presented by this Petition.

Respectfully submitted,

JOHN G. BERGDOLL
Counsel of Record
Law Offices of John G. Bergdoll
300 West Market Street
York, Pennsylvania 17401
(717) 845-5131

Attorney for Petitioner

APPENDIX A

IN THE SUPREME COURT
OF PENNSYLVANIA
MIDDLE DISTRICT

COMMONWEALTH OF PENNSYLVANIA,	:	No. 759
	:	Middle District
	:	Allocatur Dkt. 1997
Respondent,	:	
	:	
v.	:	
	:	Petition for
DAVID L. WILLIAMS,	:	Allowance
	:	Appeal from
Petitioner.	:	Superior Court

ORDER

PER CURIAM:

AND NOW, this 23rd day of February, 1998, the Petition for Allowance of Appeal is hereby DENIED.

TRUE & CORRECT COPY
ATTEST:
FEB 24, 1998

/s/ Shirley Bailey
SHIRLEY BAILEY
CHIEF CLERK

APPENDIX B

COMMONWEALTH OF PENNSYLVANIA	)	IN THE SUPERIOR COURT OF PENNSYLVANIA
	)	
v.	)	
	)	
DAVID L. WILLIAMS, Appellant	)	NO. 00481 HARRISBURG, 1996

Appeal from the Judgment of Sentence in the Court of Common Pleas of York County, Criminal Division, No. 70 SCA 1995

BEFORE: TAMILIA, J., HUDOCK, J. and CERCONE, P.J.E.

MEMORANDUM:

This is an appeal of the judgment of sentence of ninety (90) days' incarceration and a $1,000 fine imposed following appellant's de novo summary trial. Appellant's motion to dismiss was denied and he was found guilty of driving while his license was suspended for a DUI conviction.[1]

The following statement of facts was provided by the trial court in its February 5, 1996 Opinion, which was adopted as its Pa.R.A.P. 1925(a) Opinion.

> Defendant was stopped by the Springettsbury Township Police on November 20, 1994, after following the defendant for approximately one-half mile on the Route 30 by-pass. The defendant was driving below the posted speed limit of 40 m.p.h. and had its right tires travelling on the berm.

---

[1] 75 Pa. C.S. § 1543(b).

> The defendant, who is blind in one eye, passed the field sobriety tests that were administered. The defendant informed the officer that he did not have a driver's license because his had been suspended as the result of a DUI conviction. Defendant alleges that the officer violated his rights when he neglected to inform the defendant of the mandatory penalties under §1543(b) of the Pennsylvania Motor Vehicle Code.
>
> On December 9, 1994, a citation was issued. The officer issued the citation after official certification of the suspension from the Department of Transportation which he received on December 5, 1994.
>
> The defendant was found guilty of driving without a license by the District Justice, and a timely appeal to the Court of Common Pleas followed. Irrespective of this appeal, the defendant's conviction was transmitted to the Department of Transportation. The Department processed the conviction because the defendant had submitted the wrong appeal papers.

(Slip Op., Erb, J., 2/5/96, pp. 1-3; footnote omitted.)

Appellant first argues the patrolman, Officer Harvey who stopped his vehicle on November 20, 1994 did so without articulable and reasonable grounds to suspect that appellant had committed a violation of the Motor Vehicle Code. Second, appellant asserts Officer Harvey failed to properly and timely initiate the instant proceeding, as a citation for driving with a suspended license was not immediately issued at the scene of the traffic stop. Third, appellant asserts the evidence presented was insufficient to demonstrate that he was notified, prior to his stop by the officer, of the penalty imposed for a violation of section

1543(b) and, as such, a verdict of not guilty, dismissal and/or discharge of appellant is required. Lastly, appellant argues his prosecution under section 1543(b) of the Pennsylvania Motor Vehicle Code is violative of the double jeopardy clauses of the United States and Pennsylvania Constitutions.

Appellant's first argument is without merit. An officer may conduct a traffic stop if there is "articulable and reasonable grounds to suspect" that a violation of the Motor Vehicle Code has occurred. ***Commonwealth v. McElroy,*** 428 Pa. Super. 69, ____, 630 A.2d 35, 39 (1993). Because Officer Harvey observed appellant driving erratically, articulable and reasonable grounds to suspect that he was violating the Motor Vehicle Code were established at trial. ***Commonwealth v. Hamme,*** 400 Pa. Super. 537, 583 A.2d 1245 (1990). Therefore, the officer's stop of appellant's vehicle was justified.

Next, appellant argues that, rather than filing the traffic citation for driving with a suspended license on December 13, 1994, Officer Harvey should have immediately issued the citation at the scene of the traffic stop on November 20, 1994. This argument is also without merit. In filing the citation for the summary offense within thirty (30) days of its occurrence, Officer Harvey followed proper procedure. The citation was timely filed pursuant to 42 Pa.C.S. § 5553, **Summary offenses involving vehicles** (proceedings for summary offenses under Title 75 must be commenced within 30 days after the commission of the alleged offense), and was properly filed pursuant to 75 Pa.C.S. § 1543 (d), **Citation of appropriate subsection,** as Officer Harvey verified through the Pennsylvania Department of Transportation that appellant's license had been suspended due to a DUI conviction.

Appellant contends in his third argument that a dismissal, discharge and/or verdict of not guilty is required because the evidence presented was insufficient to demonstrate he had notice of the nature and extent of the mandatory penalty under section 1543(b). The case of ***Commonwealth v. Gamble,*** 376 Pa. Super. 590, 546 A.2d 681 (1988), is cited by appellant for the proposition that, in order to be subject to the section 1543(b) penalty, a

defendant must be made aware of the fact that the penalty consists of a $1,000 fine and ninety (90) days' incarceration. Appellant's understanding of that case, however, is incorrect. In ***Gamble,*** as was subsequently explained in *Commonwealth v. Crockford*, 443 Pa. Super. 23, 660 A.2d 1326 (1995),

> this court ruled that although evidence of mailing (to a prior, stale address) was presented and appellant was under the belief that his license was suspended, judgment was nevertheless properly arrested. Appellant believed that his license was suspended for failure to respond to citations. In fact, it was suspended for driving under the influence. Appellant claimed he was unaware of the nature of his suspension. This court held that appellant not only had to have actual notice of his suspension, but actual notice of the true nature of the suspension. The court refused to subject appellant to the more severe penalties of 75 Pa.C.S.A. § 1543(b).

Id. at ____, 660 A.2d at 1329 n. 2. As indicated above, the holding of ***Gamble, supra,*** is helpful to appellant's case only if he did not have actual notice of the *nature* of his suspension. *Id.* It is not necessary that a defendant be given notice of potential penalties that will accompany subsequent convictions of driving while under a license suspension.

In the instant case, appellant did have actual notice that his license was suspended due to his DUI conviction. The Bureau of Driver Licensing Certification Statement, which outlined the chronology of appellant's violations and departmental actions, was made a part of the record in order to demonstrate that appellant's license was under suspension for a DUI conviction as of March 23, 1994, and official notice of that suspension was mailed to his correct address on April 12, 1994. Furthermore, appellant admitted to Officer Harvey and to the trial court that he was aware of his license suspension for his DUI conviction at

the time he was stopped (T.T., 5/31/95, pp. 18-21). Therefore, sufficient evidence was presented to sustain appellant's conviction.

Lastly, appellant contends the suspension of his driver's license for driving while already under a suspension for his DUI conviction constituted punishment, and any subsequent criminal prosecution under section 1543(b) is violative of the double jeopardy clauses of the United States and Pennsylvania Constitutions. U.S. Const. amend V; Pa. Const. art. 1, section 10. Our Court recently addressed this issue in ***Commonwealth v. Wolfe,*** 454 Pa. Super. 93, 684 A.2d 642 (1996), wherein we held that double jeopardy principles are not violated when a criminal conviction is accompanied by a motorist's license suspension. ***Id.*** Although suspensions may have an "incidental deterrent or punitive effect", the court held "the primary purpose of such suspensions is not to punish the individual but to protect the public." ***Id.*** at ____, 684 A.2d at 646.

In the same respect, while the Commonwealth seeks to punish appellant with the sentence of 90 days' incarceration and a $1,000 fine for driving with a suspended license, his 12-month suspension by the Department of Transportation on March 23, 1995 was imposed to protect the public from a motorist who had been recently adjudicated guilty of DUI and who the Department of Transportation had recently determined was an unsafe driver. The Department of Transportation had not, as of the date appellant was pulled over by Officer Harvey, received from appellant proof that he had obtained insurance and successfully completed a DUI treatment program, as was required for restoration of appellant's operating privileges. Pursuant to this Court's reasoning in ***Wolfe, supra,*** we conclude that appellant's consecutive suspension by the Department of Transportation did not constitute punishment triggering protection from a subsequent criminal prosecution.

Accordingly, the prosecution of appellant for driving while

under a license suspension is not barred by the double jeopardy clauses of either the United States Constitution or the Pennsylvania Constitution, and the trial court properly refused to dismiss the charges.

Judgment of sentence affirmed.

COMMONWEALTH OF PENNSYLVANIA	)	IN THE SUPERIOR COURT OF PENNSYLVANIA
	)	
v.	)	
	)	
DAVID L. WILLIAMS, Appellant	)	No. 00481 HARRISBURG, 1996

Appeal from the Judgment of Sentence in the Court of Common Pleas of York County, Criminal Division, No. 70 SCA 1995

J U D G M E N T

ON CONSIDERATION WHEREOF, it is now here ordered and adjudged by this Court that the judgment of the Court of Common Pleas of York County, be, and the same is hereby Affirmed.

BY THE COURT:

/s/ David A. Szewczak
Prothonotary

Dated: August 28, 1997

APPENDIX C

IN THE COURT OF COMMON PLEAS OF
YORK COUNTY, PENNSYLVANIA

Commonwealth of Pennsylvania	: No. 70 S.C.A. 1995
v.	: Driving/Suspension
David L. Williams	: D.U.I. Related

MEMORANDUM IN SUPPORT OF ORDER
PURSUANT TO Pa.R.App.P. 1925(a)

Defendant, David L. Williams, has filed an Appeal to the Superior Court from the Order of this Court dated February 5, 1996. Pursuant to Pa.R.App.P. 1925(b), the Trial Court directed Defendant to file a concise statement of matters complained of on appeal. Said statement was filed by David L. Williams on June 11, 1996.

We have reviewed the 1925(b) issues assigned by David L. Williams as issues to be raised on appeal and we refer the Superior Court to the Trial Court's Opinion and Order of February 5, 1996.

BY THE COURT

/s/ Joseph E. Erb
Joseph E. Erb, Senior Judge

Dated: September 25, 1996

APPENDIX D

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

COMMONWEALTH	:	No. 70 SCA 1995
VS.	:	
DAVID L. WILLIAMS	:	Driving Under Suspension

York, Pa., Monday, April 29, 1996

Before the Honorable Joseph E. Erb, Sr. Judge

APPEARANCES:

CRAIG R. MILSTEN, Esquire
Assistant District Attorney
for the Commonwealth

JOHN G. BERGDOLL, Esquire
for the Defendant

* * *

MR. MILSTEN: This is Commonwealth versus David L. Williams, 70 SCA 1995, Defendant was charged with driving under suspended license, DUI-related. This is the date set for his sentencing.

MR. BERGDOLL: If the Court please, we understand that there's a mandatory sentence involved here, Your Honor. We will ask for a continuation of bail, so we might have an opportunity to appeal the decision made by the Court.

I do understand at this point that there are no options available for house arrest or any intermediate punish-

ment, so I think we're prepared to proceed with sentencing.

I have explained to my client the various rights of appeal, and the rights that he would have in reference to this sentence.

THE COURT: The mandatory sentence is.

MR. MILSTEN: I'm sorry, I don't have that information.

MR. BERGDOLL: 90 days.

ORDER

Under the circumstances, we will direct that the Defendant will undergo imprisonment in York County Jail for a period of 90 days, pay $1,000 fine, and the costs, $10 under Act 45.

We direct that the execution of sentence will be withheld until an appeal can be taken by the Defendant. If an appeal is not taken within ten days, he will report to York County Jail.

MR. BERGDOLL: Your Honor, there's a 30 day appeal period. It is a direct appeal.

THE COURT: Within 30 days.

MR. BERGDOLL: Thank you.

THE COURT: If an appeal is taken, the Court will direct counsel to advise the Court if the appeal is dismissed, or the Commonwealth's position is upheld on appeal, so that the Court then will set a date for the Defendant to begin his incarceration.

* * *

blw 5/30/96

APPENDIX E

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	:	70 SCA 1995
	:	
	:	
V.	:	
	:	Driving/Suspension
DAVID L. WILLIAMS	:	DUI Related

APPEARANCES:

JONELLE L. HARTER, ESQUIRE
For the Commonwealth

JOHN G. BERGDOLL, ESQUIRE
For the Defendant

OPINION

This matter comes before the court on the motion of the defendant, David L. Williams, seeking that the case be dismissed. For the following reasons, the defendant's request will be refused and denied.

Defendant was stopped by the Springettsbury Township police on November 20, 1994, after following the defendant for approximately one-half mile on the Route 30 bypass. The defendant was driving below the posted speed limit of 40 m.p.h. and had its right tires travelling on the berm.

The defendant, who is blind in one eye, passed the field sobriety tests that were administered. The defendant informed the officer that he did not have a driver's license because his had been suspended as the result of a DUI conviction. Defendant alleges that the officer violated his rights when he neglected to

inform the defendant of the mandatory penalties under §1543(b)[1] of the Pennsylvania Motor Vehicle Code.

On December 9, 1994, a citation was issued. The officer issued the citation after official certification of the suspension from the Department of Transportation which he received on December 5, 1994.

The defendant was found guilty of driving without a license by the District Justice, and a timely appeal to the Court of Common Pleas followed. Irrespective of this appeal, the defendant's conviction was transmitted to the Department of Transportation. The Department processed the conviction because the defendant had submitted the wrong appeal papers.

First we address whether the officer had reasonable and articulable grounds to support the stop of the defendant on the evening of November 20, 1994. The court finds that the erratic driving of the defendant was sufficient to cause the officer to stop the defendant. Accordingly we will refuse and deny this alleged insufficiency.

Next, we determine whether the charges were properly initiated by the officer. The law requires that a citation in a summary case shall be filed within thirty days of the date of the

---

[1]The relevant portion of 75 §1543 Driving while operating privilege is suspended or revoked is as follows:
1543(b)(1) Any person who drives a motor vehicle on any highway or trafficway of this Commonwealth at a time when their operating privilege is suspended or revoked ...as a violation of section 3731 (relating to driving under the influence of alcohol or controlled substance) ...shall, upon conviction, be guilty of a summary offense and shall be sentenced to pay a fine of $1,000 and to undergo imprisonment for a period of not less than 90 days.

offense. 42 Pa.C.S.A. §5553(a)[2]. The record supports that the date of the offense was November 20, 1994 and that the citation was filed on December 13, 1994. The suspension was properly authenticated prior to issuance, as is required by 75 Pa. C.S.A. §1543(d)[3]. Accordingly, we determine that the charges were properly initiated by the officer.

Next, we discuss the issue of "actual notice" to the defendant of the penalties under §1543(b) of the Pennsylvania Motor Vehicle Code. The Commonwealth has the burden of proving that the defendant had actual notice of driver's suspension or revocation for a DUI-related offense. See, Commonwealth v. Crockford, __ Pa. Super. __, 660 A.2d 1326, 1329 (1995). The record reveals that the defendant had actual notice of his DUI related suspension. The defendant informed the officer as the time of the stop that he had no license because of the DUI related suspension. The defendant surrendered his license in open court at the time of the conviction, and the official notice was sent to his verified correct address by the Department, mailed April 12, 1994. Accordingly, we determine that the record supports sufficient evidence of the actual notice

---

[2]75 Pa.C.S. §5553 Summary offense involving vehicles (a) General rule.- Except as provided in subsection (b) or (c), proceedings for summary offenses under Title 75 (relating to vehicles) must be commenced within 30 days after the commission of the alleged offense or within 30 days after the discovery of the commission of the offense or the identity of the offender, whichever is later, and not thereafter.

[3]1543(d) Citation of appropriate subsection.- Prior to filing a citation for a violation of this section with the issuing authority named in the citation, the police officer shall verify the basis for the suspension with the department. Upon receiving the verification, the officer shall cite the appropriate subsection of this section on the citation. Amended 1894, Dec. 12, P.L. 1048, No. 143, §2.

to the defendant under 75 Pa. C.S.A. §1543(b).

Finally, we address the issue of double jeopardy as it applies to the separate processing of the violation by the Department of Motor Vehicles. Defendant relies on a line of cases which lend some support to his contention that a DUI prosecution is barred after the civil penalty of license suspension has been effected. However, the cases are distinguishable. In Pennsylvania, §1543(b) is a criminal statute that has the license suspension included in the statute. The penalty is triggered by the finding of guilty of the defendant. See, Helt v. Pennsylvania D.O.T., 69 Pa. Cmwlth. 333, 452 A.2d 74 (1982).

Under the facts of this case, the suspension processing was premature in light of the failure of the defendant to properly give the Department notice of his intention to appeal his conviction. The procedural flaw cannot trigger a double jeopardy violation for the underlying conviction as a separate or successive proceeding. Accordingly, we will refuse and deny all alleged error and will affirm the summary judgement conviction.

BY THE COURT,

/s/ Joseph E. Erb
Joseph E. Erb, Senior Judge

IN THE COURT OF COMMON PLEAS OF YORK COUNTY, PENNSYLVANIA

COMMONWEALTH OF PENNSYLVANIA	: 70 SCA 1995
V.	:
DAVID L. WILLIAMS	: Driving/Suspension : DUI Related

APPEARANCES:

JONELLE L. HARTER, ESQUIRE
For the Commonwealth

JOHN G. BERGDOLL, ESQUIRE
For the Defendant

ORDER

AND NOW, TO WIT, This 5th day of February, 1996, the summary conviction appeal of the defendant, David L. Williams is hereby affirmed. The alleged points of error are refused and denied.

The defendant is directed to appear for sentencing on Monday, March 25, 1996, 9:30 a.m.

BY THE COURT,

/s/ Joseph E. Erb
Joseph E. Erb, Senior Judge

APPENDIX F

75 Pa.C.S.A. § 1543 TITLE, REGISTRATION, LICENSING

§ 1543. Driving while operating privilege is suspended or revoked

(a) Offense defined.- Except as provided in subsection (b), any person who drives a motor vehicle on any highway or traffic way of this Commonwealth after the commencement of a suspension, revocation or cancellation of the operating privilege and before the operating privilege has been restored is guilty of a summary offense and shall, upon conviction, be sentenced to pay a fine of $200.

(b) Certain offenses.-

(1) Any person who drives a motor vehicle on any highway or trafficway of this Commonwealth at a time when their operating privilege is suspended or revoked as a condition of acceptance of Accelerated Rehabilitative Disposition for a violation of section 3731 (relating to driving under influence of alcohol or controlled substance) or because of a violation of section 1547(b)(1) (relating to suspension for refusal) or 3731 shall, upon conviction, be guilty of a summary offense and shall be sentenced to pay a fine of $1,000 and to undergo imprisonment for a period of not less than 90 days.

(2) This subsection shall apply to any person against whom one of these suspensions has been imposed whether the person is currently serving this suspension or whether the effective date of suspension has been deferred under any of the provisions of section 1544 (relating to additional period of revocation or suspension). This provision shall also apply until the person has had the operating privilege restored. This subsection shall also apply to any revocation imposed pursuant to section 1542 (relating to revocation of habitual offender's license) if any of the enumerated offenses was for a violation of section 3731.

(c) Suspension or revocation of operating privilege. - Upon receiving a certified record of the conviction of any person under this section, the department shall suspend or revoke that person's operating privilege as follows:

(1) If the department's records show that the person was under suspension, recall or cancellation on the date of violation, and had not been restored, the department shall suspend the person's operating privilege for an additional one-year period.

(2) If the department's records show that the person was under revocation on the date of violation, and had not been restored, the department shall revoke the person's operating privilege for an additional two-year period.

(d) Citation of appropriate subsection. -Prior to filing a citation for a violation of this section with the issuing authority named in the citation, the police officer shall verify the basis for the suspension with the department. Upon receiving the verification, the officer shall cite the appropriate subsection of this section on the citation.

1976, June 17, P.L. 162, No. 81, § 1, imd. effective. Amended 1982, Dec.15, P.L. 1268, No. 289, § 4, effective in 30 days; 1986, Dec. 11, P.L. 1530, No. 166, § 4, effective in 60 days; 1987, Nov.23, P.L. 399, No. 82, § 3, effective in 60 days; 1994, Dec.12, P.L. 1048, No. 143, § 2, effective in nine months.

APPENDIX G

COMMONWEALTH OF PENNSYLVANIA
DEPARTMENT OF TRANSPORTATION
Bureau of Driver Licensing
Harrisburg, PA 17123
FEBRUARY 24, 1995

DAVID L. WILLIAMS
R D 4 BOX 4555

SPRING GROVE PA 17362

950489283815557 001
02/17/1995
13523414
07/21/1948

LICENSE IN BUREAU

Dear Motorist:

As a result of your conviction on 01/25/1995 of violating Section 1543 of the Vehicle Code, DRIVING WHILE SUSP/REVOKE on 11/20/1994, your driving privilege is being SUSPENDED for a period of 1 YEAR(S) as mandated by Section 1543 of the Vehicle Code.

Effective Date of Suspension: 03/23/1995, 12:01 a.m.

The above mentioned sanction is in addition to any previously issued sanction(s).

You will be notified of any outstanding restoration requirements approximately 30 days before the eligibility date of the restoration of your driving privilege. You must follow those instructions very carefully in order to have your driving privilege restored.

You have the right to appeal to the Court of Common Pleas of the county of your residence within 30 days of the mail date (February 24, 1995) of this Notice. Sending a copy to this department of a timely, filed appeal will stay the department's action pending a final decision by the court. The copy must be sent by certified mail to:

Room 103
Transportation and Safety Building
Harrisburg, PA 17120

950489283815557

Sincerely,

/s/ Douglas K. Tobin
Douglas K. Tobin, Director
Bureau of Driver Licensing

SEND FEE/LICENSE/DL-16LC/TO:
Department of Transportation
Bureau of Driver Licensing
P. O. Box 68693
Harrisburg, PA 17106-8693

INFORMATION (7:00 AM TO 6:30 PM)

Pittsburgh Area		- 412-565-5670
Philadelphia Area		- 215-698-8100
Harrisburg Area		- 717-787-3130
Toll Free	1	- 800-932-4600

Supreme Court, U.S.
FILED
JUN 25 1998
CLERK

97-1898

In the

SUPREME COURT OF THE UNITED STATES

October Term, 1997

DAVID L. WILLIAMS,
Petitioner

V.

COMMONWEALTH OF PENNSYLVANIA,
Respondent

On Petition for Writ of Certiorari to the
Supreme Court of the Commonwealth of Pennsylvania

RESPONDENT'S BRIEF IN OPPOSITION

H. Stanley Rebert
District Attorney
Counsel of Record
Office of the District Attorney
York County Courthouse
28 East Market Street
York, Pennsylvania 17401
(717) 771-9600
Attorney for Respondent

QUESTION PRESENTED FOR REVIEW

I. Were Petitioner's Constitutional rights against Double Jeopardy and for Due Process of law under the Fifth and Fourteenth Amendments to the United States Constitution violated due to the imposition of a criminal and a civil penalty in this case?

PARTIES TO THE PROCEEDING

The petition does not accurately list the parties to the proceeding.

The Office of District Attorney of York County is an agency of York County, Pennsylvania.

The Office of the Attorney General of the Commonwealth of Pennsylvania should also be included as a party to this proceeding pursuant to 28 U.S.C. § 2403(b). Petitioner has not stated, pursuant to Supreme Court Rule 29(4)(c), whether the Supreme Court of the Commonwealth of Pennsylvania, pursuant to 28 U.S.C. § 2403(b), certified to the State Attorney General the fact that the constitutionality of a statute of this state was drawn into question by Petitioner.

TABLE OF CONTENTS

	Page
QUESTION PRESENTED FOR REVIEW	i
PARTIES TO THE PROCEEDING	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE WRIT	2
CONCLUSION	6

TABLE OF AUTHORITIES

	Page
Cases Cited:	
***Breed v. Jones*, 421 U.S. 519, 95 S.Ct. 1779, 44 L.Ed.2d 346 (1975)**	3
***Commonwealth v. Gamble*, 376 Pa.Super. 590, 546 A.2d 681 (1988)**	5
***Commonwealth v. Wolfe*, 454 Pa.Super. 93, 684 A.2d 642 (1996)**	5
***Helvering v. Mitchell*, 303 U.S. 391, 58 S.Ct. 630, 82 L.Ed. 917 (1938)**	3, 5
***Hudson v. United States*, ___ U.S. ___, 118 S.Ct. 488, 139 L.Ed.2d 450 (1997)**	2, 3, 4, 5
***Kennedy v. Mendoza-Martinez*, 372 U.S. 144, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963)**	4
***Missouri v. Hunter*, 459 U.S. 359, 103 S.Ct. 673, 74 L.Ed.2d 535 (1983)**	3
***Moore v. Illinois*, 14 How. 13, (1852)**	3
***Rex Trailer Co. v. United States*, 350 U.S. 148, 76 S.Ct. 219, 100 L.Ed. 149 (1956)**	3
***United States v. Ward*, 448 U.S. 242, 248-249, 100 S.Ct. 2636, 65 L.Ed.2d 742 (1980)**	3, 4
***United States ex rel. Marcus v. Hess*, 317 U.S. 537, 63 S.Ct. 379, 87 L.Ed. 443 (1943)**	3
***Wong Wing v. United States*, 163 U.S. 228, 16 S.Ct. 977, 41 L.Ed. 140 (1896)**	4

Federal Statutes Cited:

28 U.S.C. § 2403(b) ii

Federal Rules Cited:

Supreme Court Rule 29(4)(c) ii

State Statutes Cited:

75 Pa.C.S.A. § 1543 1-5

State Rules Cited:

Pa.R.Crim.P. 21 4

Pa.R.Crim.P. 86 4

STATEMENT OF THE CASE

The petition seeks this Court's review of the Pennsylvania Supreme Court's order (No. 759 Middle District Allocatur Dkt. 1997) denying Petitioner's request for allowance of appeal from a decision rendered by the Superior Court of Pennsylvania. (No. 481 Harrisburg 1996).

The petition challenges the constitutionality of 75 Pa.C.S.A. § 1543, claiming that it violates Petitioner's Double Jeopardy and Due Process rights through the imposition of what Petitioner claims are successive "criminal" penalties.

As detailed below, there is no cause for this Court's review of Petitioner's legal contention, which was rejected by both the Supreme Court of Pennsylvania and the Superior Court of Pennsylvania.

A. The petition includes facts not found in the record of this case.

First, there is no record support for Petitioner's allegation that "The Petitioner, partially for financial reasons, attempted pro se to respond to the Notice of action of Suspension..." (Pet. 4) The reason Petitioner chose to act without counsel is not a part of the record and is not relevant to the resolution of the issue at hand.

Second, the petition states:

> "In most geographical areas of the United States, including most areas of York County, Pennsylvania where this offense occurred, the sole means of transportation is by automobile. To the great number of persons in these places, the inability to drive creates the inability to work, the inability to obtain the necessities of life such as food and medical assistance and the inability to exercise the constitutional rights of a citizen to participate in government and to vote and, of

> course, social isolation especially for those persons who live alone."

(Pet. 13) To the extent these allegations are factual or seek to establish an actual hardship suffered by Petitioner due to the revocation of his driving privileges, they are not supported by the record.

Third, the petition states: "Statistical data after the enactment and release of these suspended drivers to drive again in fact showed a decrease in accident fatalities per vehicle miles traveled. 1996 Pennsylvania Crash Facts and Statistics, Pennsylvania Department of Transportation, Bureau of Highway Safety and Traffic Engineering, Page 11." (Pet. 14) The above data was never made part of the record in this case. Furthermore, the petition misrepresents the import of the above data. While the data cites a decrease in accident fatalities per miles traveled, it covers all drivers, not simply those suspended drivers who had their privileges returned.

REASONS FOR DENYING THE WRIT

The Petitioner's claim that § 1543 of the Pennsylvania Motor Vehicle Code (75 Pa.C.S.A. § 1543) is repugnant to the United States Constitution does not warrant review by this Court. The decision below was a plainly correct application of settled law.

In ***Hudson v. United States*, ___ U.S. ___, 118 S.Ct. 488, 139 L.Ed.2d 450 (1997)**, this Court addressed the legal standard applicable to Double Jeopardy claims under the Fifth Amendment:

> The Double Jeopardy clause provides that no 'person [shall] be subject for the same offense to be twice put in jeopardy of life and limb'. This Court recognized that the Double Jeopardy clause does not prohibit the imposition of any additional

> sanction that could, "in common parlance", be described as punishment. ***United States ex rel. Marcus v. Hess*, 317 U.S. 537, 549 (1943)** (quoting ***Moore v. Illinois*, 14 How. 13, 19 (1852)**). The Clause protects only against the imposition of multiple criminal punishments for the same offense, ***Helvering v. Mitchell*, 303 U.S. 391, 399 (1938)**; see also ***Hess*, 317 U.S. at 548-549** ("Only" "criminal punishment" subject[s] the defendant to 'jeopardy' within the constitutional meaning); ***Breed v. Jones*, 421 U.S. 519, 528 (1975)**("In the constitutional sense, jeopardy describes the risk that is traditionally associated with a criminal prosecution"), and then only when such occurs in successive proceedings, see ***Missouri v. Hunter*, 459 U.S. 359, 366 (1983)**."

Hudson v. United States*, *supra.

According to ***Hudson***, it must initially be determined whether the particular punishment is criminal or civil. Even in those cases when the legislature is deemed to have voiced an intention to establish a civil penalty, ***Hudson*** requires this Court to further inquire whether the statutory scheme is so punitive either in purpose or effect so as to transform what was clearly intended as a civil remedy into a criminal penalty. *See* ***United States v. Ward*, 448 U.S. 242, 248-249, 100 S.Ct. 2636, 65 L.Ed.2d 742 (1980)** and ***Rex Trailer Co. v. United States*, 350 U.S. 148, 154, 76 S.Ct. 673, 100 L.Ed. 149 (1956)**. Applying the above standard, the refusal of the court below to declare 75 Pa.C.S.A. § 1543 unconstitutional was a proper decision.

With the rationale in ***Hudson*** as a yardstick, the Pennsylvania Legislature has created a statute with both a criminal and a civil penalty. 75 Pa.C.S.A. § 1543(b) created a summary offense that carries a mandatory sentence of no less than 90 days in prison and a $1000 fine. Jurisdiction over the trial of summary offenses lies with district justices (Pa.R.Crim.P. 21), with de novo appeals heard in the county Courts of Common Pleas (Pa.R.Crim.P. 86). *See* ***Wong Wing v. United States*, 163 U.S.**

228, 235, 16 S.Ct. 977, 41 L.E. 140 (1896)(holding that quintessential criminal punishment may be imposed only "by a judicial trial"). There is no dispute as to the characterization of this section being criminal in nature.

75 Pa.C.S.A. § 1543(c) [**Suspension or revocation of operating privilege**], authorized the Pennsylvania Department to revoke an individual's driving privileges upon receipt of a certified record of the conviction of any person under § 1543. The gist of Petitioner's argument is that this section amounts to criminal punishment. The petition ignores the fact that the authority to revoke driving privileges was granted to an administrative agency which, according to both ***Hudson***, ***supra***, and ***Helvering***, ***supra***, is prima facie evidence that the legislature intended to provide for a civil sanction.

Even though the statute carries a civil intent, this Court must still apply the second prong of the test in ***United States v. Ward***, ***supra***, to determine whether the revocation of a driver's license is "so punitive in form and effect as to render it criminal despite the legislature's intent to the contrary". ***Hudson*** held only the "clearest proof" will suffice to override the legislative intent.

The second prong of the ***Ward*** test, reaffirmed in ***Hudson***, involves an analysis of the factors previously set forth in ***Kennedy v. Mendoza-Martinez***, **372 U.S. 144, 168-169, 83 S.Ct. 554, 9 L.Ed.2d 644 (1963)**. They are:

> (1) whether the sanction involves an affirmative disability or restraint; (2) whether it has historically been regarded as punishment; (3) whether it comes into play only on a finding of scienter; (4) whether its operation will promote the traditional aims of punishment- retribution and deterrence; (5) whether the behavior to which it applies is already a crime; (6) whether an alternative purpose to which it may be rationally be connected is assignable for it, and (7) whether it appears excessive in relation to the alternative purpose assigned.

Id. Furthermore, both ***Kennedy*** and ***Hudson*** held that an individual factor is not dispositive in rendering the punishment criminal.

Contrary to the argument in the petition, revocation of a driver's license does not involve an "affirmative disability or restraint." There is no difference between debarment and driver's license revocation in this respect. Debarment deprives a person of the privilege of practicing a certain licensed occupation. Driver's license revocation deprives a person of practicing another licensed activity, namely driving an automobile. In ***Hudson***, this Court found that debarment did not involve an "affirmative disability or restraint" and there is no reason to depart from that reasoning for the licensing of drivers.

Revocation of driving privileges has been historically regarded as a civil penalty. In Pennsylvania, a driver's license is a "privilege" granted by the Commonwealth. This Court has repeatedly held that "revocation of a privilege voluntarily granted...is characteristically free of the punitive element". ***Helvering v. Mitchell*, 303 U.S. 391, 399, 58 S.Ct. 630, 82 L.E. 917 (1938)**.

Despite the contention in the petition, scienter is not necessary to trigger the license revocation under the instant statute. While Pennsylvania courts have held that a conviction under 75 Pa.C.S.A. § 1543(b) requires scienter, in that the defendant must have been aware of the license suspension or revocation when found driving a vehicle, *see* ***Commonwealth v. Gamble*, 376 Pa.Super. 590, 546 A.2d 681 (1988)**, scienter provides no defense to 75 Pa.C.S.A. § 1543(c). A certified record of the conviction is the only proof necessary to trigger the license revocation that is automatic and mandatory. There is no regard for the violator's state of mind.

Certainly the revocation of one's driver's license would deter others from emulating Petitioner's conduct, but the revocation carries a civil purpose. The Pennsylvania Superior Court in ***Gamble*** noted that "the 12 month suspension by the Department of Transportation...was imposed to protect the public

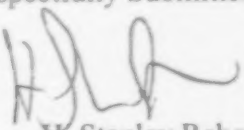
from a motorist who had recently been adjudicated guilty of a DUI [Driving Under the Influence] and who the Department of Transportation had recently determined was an unsafe driver". That same Court previously held in ***Commonwealth v. Wolfe*, 454 Pa.Super. 93, 684 A.2d 642 (1996)**, that "although suspensions may have an 'incidental deterrent or punitive effect', the primary purpose of such suspensions is not to punish the individual but to protect the public." ***Id.* at 96, 684 A.2d at 646**.

The conclusion of the lower courts that the license suspension was not criminal punishment is well within the parameters of the ***Hudson*** decision and, as such, does not call for this Court's review.

CONCLUSION

For these reasons, a Writ of Certiorari should be denied.

Respectfully Submitted,



H. Stanley Rebert
District Attorney
Office of the District Attorney
York County Courthouse
28 East Market Street
York, Pennsylvania 17401
(717) 771-9600
Attorney for Respondent